IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A.No.2258 of 2003

Date of Decision : 24.07.2007

Tilak Raj and another .....Appellants

versus

Krishna Devi and others .....Respondents

CORAM : HON'BLE MR.JUSTICE HEMANT GUPTA

Present: Mr.Raman Mahajan, Advocate for the appellants
Mr.B.D.Sharma, Advocate for respondent No.1.

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JUDGMENT

HEMANT GUPTA, J. (Oral)

The defendants are in second appeal aggrieved against the judgment and decree passed by the Courts below whereby suit for declaration that the plaintiff is a legatee of deceased Dewan Chand on the basis of Will dated 12.7.1963, was decreed.

The dispute in the present suit is regarding the estate of Dewan Chand who died on 21.8.1980. The plaintiff, who is the second wife of Dewan Chand, relies upon the Will dated 12.7.1963, whereas defendants-appellants who are the sons of Dewan Chand from his first wife, are relying upon the Will dated 18.9.1973.

It has been found by the learned First Appellate Court that there is no dispute regarding execution of the Will dated 12.7.1963 and the question which requires to be examined is that whether the Will dated 18.9.1973 was executed by Dewan Chand in favour of the appellants. It has been found that the attesting witness Gurbachan Singh, PW-2 has not

deposed in his evidence that the Will was signed by the Testator in his presence. It is further found that there is no mention of the earlier Will dated 12.7.1963 in the Will dated 18.9.1973. Still further, reference has been made to the order Exhibit PW3/4, passed by the Sub Judge, IInd Class, Jalandhar on 4.6.1980 wherein Dewan Chand has admitted that Krishna Devi is in possession of the suit property on the basis of Will executed by him i.e. the Will dated 12.7.1963.

Both the Courts below have discussed the entire evidence so as to return a finding that the Will dated 18.9.1973 executed by Dewan Chand in favour of the defendants is not proved. The said finding is recorded on the basis of proper appreciation of evidence. It could not be pointed out that any evidence has been misread or not taken into consideration.

I do not find any illegality or irregularity in the findings recorded by the Courts below which may give rise to any substantial question of law for consideration of this Court in second appeal.

The appeal stands dismissed.

24-07-2007 (HEMANT GUPTA)
*mohinder JUDGE